

Proposed Rules of Board on Judicial Standards

C4-85-697

OFFICE OF
APPELLATE COURTS
FILED

DEC 9 1985

PROPOSED DEFINITIONS SECTION

WAYNE TSCHIMPERLE
CLERK

"Information" is any communication, oral or written, made by judges, lawyers, court personnel or any member of the general public regarding the conduct of a judge.

"Evaluation" is a prompt and discrete inquiry by the executive secretary into the facts and circumstances of any information which alleges conduct listed in Rule 4(a).

"Investigation" is a full inquiry by the executive secretary, with the authorization of the board, into any complaint filed with the executive secretary.

"Complaint" is information upon which the board finds sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a).

"Judge" is any judge, judicial officer, referee or other hearing officer employed in the judicial branch of the state of Minnesota.

"Formal Statement of Charges" is information in a complaint upon which the board has determined there is sufficient cause to proceed.

"Formal Statement of Complaint" is information in a Formal Statement of Charges upon which the board has determined to conduct a formal hearing.

Rule 1. Organization of Board

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of Court of Appeals, one judge of district court, one judge of municipal court, one judge of county court, two lawyers who have practiced law in the state for ten years, and four resident citizens of Minnesota who are not judges, retired judges, or lawyers. Effective July 1, 1980, the executive secretary, who shall be an attorney licensed to practice in Minnesota, shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate.

(b) Term of Office.

(1) The term of each member shall be four years.

(2) No member shall serve more than two full four-year terms or their equivalent, not to exceed eight years.

(c) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge who is a member of the board ceases to hold the judicial office which he held at the time of his selection; or

(iii) When a lawyer ceases to be admitted to practice in the courts of this state or is appointed or elected to a judicial office; or

(iv) When a lay member becomes a lawyer; or

(v) When a member is no longer a resident citizen.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of his predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of his predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor and the Supreme Court.

(d) Duties and Responsibilities of Executive Secretary. The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

- (1) Receive information and allegations as to misconduct or disability;
- (2) Make preliminary evaluations;
- (3) Conduct investigations of complaints as directed by the board;
- (4) Recommend dispositions;
- (5) Maintain the board's records;
- (6) Maintain statistics concerning the operation of the board and make them available to the board, and to the Supreme Court;
- (7) Prepare the board's budget for approval by the board, and administer its funds;
- (8) Employ and supervise other members of the board's staff;
- (9) Prepare an annual report of the board's activities for presentation to the board, to the Supreme Court, and to the public;
- (10) Employ, with the approval of the board, special counsel, private investigators, or other experts as necessary to investigate and process matters before the board and before the Supreme Court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose shall not be allowed.

(e) Quorum and Chairperson.

- (1) A quorum for the transaction of business by the board shall be six members of the board.
- (2) The board shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson.

(f) Meetings of the Board. Meetings of the board shall be held at the call of the chairperson, the vice-chairperson, the executive secretary, or the written request of three members of the board.

(g) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the Chief Justice of the Supreme Court and other copies may be made available to the public by a majority vote of the full board.

(h) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget.

Rule 2. Jurisdiction and Powers of Board

(a) Powers in General. The board shall have the power to receive information, investigate, conduct hearings, and make recommendations to the Supreme Court concerning:

(1) Allegations of judicial misconduct;

(2) Allegations of physical or mental disability of judges; and

(3) Matters of voluntary retirement for disability.

(4) Review of a judge's compliance with Minn. St. 546.27.

(b) Persons Subject to Discipline. Anyone exercising judicial powers and performing judicial functions within the judicial branch, including judges assigned to administrative duties, shall be subject to judicial discipline and disability retirement under these rules.

(c) Jurisdiction Over Sitting Judges. The board shall have jurisdiction over the conduct of all persons subject to discipline under section (b), including all sitting full and part-time judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. In cases of sitting full-time judges, this jurisdiction shall be exclusive. In cases of sitting part-time judges, the board shall have

exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board may also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of a part-time judge not occurring in a judicial capacity, including conduct occurring prior to the assumption of judicial office.

(d) Jurisdiction Over Former Judge. The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the Supreme Court.

(e) Subpoena and Discovery.

(1) During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(e), failure or refusal of a judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute conduct prejudicial to the administration of justice.

(2) At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(e), both the board and the judge being investigated shall be entitled to compel, by subpoena, attendance and testimony of witnesses, including the judge as a witness, and the inspection of documents, books, accounts and other records.

(3) The power to enforce process may be delegated by the Supreme Court.

(f) Rules of Procedure and Forms. The board shall have the authority to submit rules of procedure for the approval of the Supreme Court, and to develop appropriate forms for its proceedings.

(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8.

Rule 3. Immunity

Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties.

Rule 4. Grounds for Discipline

(a) Grounds for discipline shall include:

- (1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude;
- (2) A persistent failure to perform judicial duties;
- (3) Incompetence in the performance of judicial duties;
- (4) Habitual intemperance;
- (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute;
- (6) Conduct that constitutes a violation of the code of judicial conduct or professional responsibility.

(b) Disposition of Criminal Charges. A conviction, acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.

(c) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Claims of error shall be left to the appellate process.

Rule 5. Confidentiality

(a) Before Formal Statement of **Complaint and Answer**.

(1) All proceedings shall be confidential until the Formal Statement of **Complaint and Answer** have been filed with the Supreme Court pursuant to Rule 9.

(2) The board shall establish procedures for enforcing the confidentiality provided by this rule.

(3) A judge under investigation may waive his right to confidentiality at any time during the proceedings.

(b) Public Statements by Board. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(c) Disclosure for Judicial Selection, Appointment, or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only (1) if the judge in question agrees to such dissemination and (2) if the file reflects some action of the board pursuant to Rule 6(g) or Rule 8.

(d) Oath. All members, employees, and agents of the board shall execute an oath which shall be filed with the board. Such oath shall include, but not necessarily be limited to, the following declarations of the person executing the oath:

(1) The person is aware of and understands the confidentiality requirement set forth in this rule;

(2) The person understands that he or she must abide by the confidentiality requirement;

(3) The person agrees to abide by the confidentiality requirement;

(4) The person agrees to report immediately to the board any violations of the confidentiality requirement, whether committed by that person or another;

(5) The person agrees and understands that any violations of the confidentiality requirement, or the person's oath, will result in removal as a board member or termination of employment with the board, and may lead to contempt proceedings pursuant to Rule 5(e).

(e) Contempt. Any member, employee or agent of the board who violates either the confidentiality requirement of this rule or the oath executed pursuant to this rule, may be held in contempt of the board by order of the Supreme Court. The board, by majority vote of its members, may refer any alleged contempt to the Supreme Court for its review. Such referral shall include the board's findings, conclusions, and recommendations with respect to the alleged contempt.

After referral from the board, the Supreme Court shall hold such hearings as it deems necessary, including a hearing before a special referee appointed by the Supreme Court. Upon a finding of contempt by the Supreme Court, it may impose such penalties or sanctions as it deems appropriate.

Rule 6. Procedure Prior to Sufficient Cause Determination

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable information.

(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.

(3) Upon request of the chief justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.

(b) Absolute Privilege. Information or related testimony submitted to the board or its staff shall be absolutely privileged, and no civil action predicated on the information may be instituted against the informant or witness, or their counsel.

(c) Evaluation, Screening and Complaint.

(1) Upon receipt of information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation.

(2) The results of all evaluations shall be routinely submitted to the board. If the board determines that there exists sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a), it may authorize an investigation by filing the information as a complaint with the executive secretary.

(d) Discretionary Notice.

(1) Notice that a complaint has been filed may be given to the judge named in the complaint.

(2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the filing of such complaint and if not notified the complaint may not be used against the judge.

(e) Sufficient Cause Determination.

(1) The board shall promptly consider the results of an investigation conducted by the executive secretary. If the board determines that there is sufficient cause to proceed, it shall comply with Rule 8.

(2) A finding of sufficient cause shall require the concurrence of a majority of the full board.

(f) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the informant, if any, shall be notified. If the judge has been informed of the proceeding, he shall also be notified of its termination, and the file shall be closed.

(2) A closed file may not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 6(g) or Rule 8.

(3) (stricken).

(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed with a formal hearing, it may make any of the following dispositions:

(1) The board may issue a private reprimand.

(2) The board may by informal adjustment dispose of a complaint by:

(i) Informing or admonishing the judge that his conduct is or may be cause for discipline;

(ii) Directing professional counseling or assistance for the judge; or

(iii) Imposing conditions on a judge's conduct.

(h) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(g) may demand a full hearing before a factfinder as provided in Rule 9.

Rule 7. Interim Sanctions

(a) Mandatory Suspension. The Supreme Court shall, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging him with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(b) Permissive Suspension. The Supreme Court may, on its own motion or upon recommendation of the board, suspend a judge with pay.

(1) Upon the filing of misdemeanor or gross misdemeanor charges against the judge if it adversely affects his ability to perform the duties of his office.

(2) Upon the claim by the judge that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is a finding of no disability, the disciplinary proceeding shall continue.

(3) Upon the recommendation to the Supreme Court by the Board of Judicial Standards for his removal or retirement.

(4) Upon a finding by the board or the fact-finder that a judge has a physical or mental disability that seriously interferes with the performance of his duties.

(5) In any other proceeding under these rules.

(c) Review of Permissive Suspension. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the Supreme Court upon his application for review of the interim suspension order.

Rule 8. Procedure Where Sufficient Cause Found

(a) Formal Statement of Charges.

(1) After a finding of sufficient cause to proceed, a Formal Statement of Charges against the judge and the alleged facts forming its basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.

(2) The judge shall be served promptly with a copy of the Formal Statement of Charges. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The documents served under section (2) shall require the judge to respond to the Formal Statement of Charges in writing within 20 days. A personal appearance before the board shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, his statement shall be recorded.

(b) Termination after Response. The board may terminate the proceeding and dismiss the Formal Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event give notice to each informant and to the judge that it has found insufficient cause to proceed.

Rule 9. Formal Statement of Complaint and Notice

(a) Formal Statement of Complaint

(1) The board shall prepare and sign a Formal Statement of Complaint.

(2) The judge shall be served promptly with a copy of the Formal Statement of Complaint. Service shall be accomplished in accordance with the Rules of Civil Procedure in effect at the time of the service. The judge shall respond to the Formal Statement of Complaint in writing within 20 days. The executive secretary, upon receiving the written response of the judge, or if none has been received, within 25 days of service of the Formal Statement of Complaint, shall file the Formal Statement of Complaint and any written response thereto with the Supreme Court.

(3) The files of the board, other than the Formal Statement of Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions, or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(b) Notice of Hearing.

(1) Upon the filing of Formal Statement of Complaint and Response, if any, with the Supreme Court, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 90 days than the time limits set under section (a) (2) of this rule. The judge and all counsel shall be notified of the time and place of the hearing.

(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.

(3) The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader.

Rule 10. Formal Hearing

(a) Factfinder.

(1) The formal hearing shall be public and conducted before a factfinder, which may be a referee or three-member referee panel, appointed by the Supreme Court.

(2) The Supreme Court shall appoint a factfinder to conduct such hearings within 10 days of the filing of the Formal Statement of Complaint.

(3) Whenever possible, referees appointed by the Supreme Court to preside at a hearing shall be retired judges, in good standing, but in any event, referees shall be either judges or lawyers.

(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the Minnesota Rules of Evidence shall apply, and the judge shall be accorded due process of law.

(c) Presentation: Burden of Proof; Cross-examination; Recording.

(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the factfinder.

(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.

(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim.

(d) Amending Allegations. By leave of the factfinder or by consent of the judge, the Formal Statement of Complaint may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response.

Rule 11. Procedure Following Formal Hearing

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation.

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations.

(c) Review by the Board. The findings and recommendations and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder.

(d) Disciplinary Sanctions. The board's decision shall include a recommendation to the Supreme Court of any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposing discipline as an attorney;
- (4) Imposing limitations or conditions on the performance of judicial duties;
- (5) Reprimand or censure;
- (6) Imposing a civil penalty;
- (7) Any combination of the above sanctions.

(e) Recommended Discipline.

(1) A recommendation for discipline shall be reported to the Court only if concurred in by a majority of all members of the board.

(2) If a majority of the members of the board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the Supreme Court with the majority decision.

Rule 12. Costs

(a) Witness Fees.

(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.

(2) Expenses of witnesses shall be borne by the party calling them, unless:

(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or

(ii) The judge is exonerated of the charges against him, in which case the Supreme Court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him and order that those fees be reimbursed.

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost.

(c) Other Costs. All other costs of these proceedings shall be at public expense.

Rule 13. Supreme Court Review

(a) Filing and Service. The board shall, at the time it files its record, findings, and recommendations with the Court, serve copies upon the respondent judge. Proof of service shall also be filed.

(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the Court shall promptly docket the matter for expedited consideration.

(c) Briefs. The board and the judge shall file briefs with the Court in accordance with the requirements of Rule 128 of the Rules of Appellate Procedure.

(d) Additional Findings and Filings;
Supplemental Record.

(1) If the Court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the board with appropriate directions, retaining jurisdiction, and shall hold the matter pending receipt of the board's filing of the additional record.

(2) The Court may order additional filings or oral argument as to specified issues or the entire matter.

(3) The Court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard.

(e) Delay for Further Proceedings. The Court, on receipt of notice of an additional proceeding before the board involving the same judge, may delay decision and hold the matter pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the Court may impose a single sanction covering all recommendations.

(f) Decision. The Court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, accepting, rejecting, or modifying in whole or in part, the recommendations of the board.

(g) Consideration of Lawyer Discipline. When the Board on Judicial Standards recommends the removal of a judge, the Supreme Court shall notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard in the Supreme Court on the issue of lawyer discipline.

(h) Charge Against Supreme Court Justice. When any charge has been filed against a member of the Supreme Court, the charge shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or his designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Justice.

(i) Motion for Rehearing. In its decision, the Supreme Court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the Court does not so direct and the respondent wishes to file a motion for rehearing, he may present a motion for rehearing within 15 days after filing of the decision.

Rule 14. Special Provisions for Cases Involving Mental or Physical Disability

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the board shall follow the same procedures that it employs with respect to discipline for misconduct.

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the board shall appoint an attorney to represent him at public expense.

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the board. The report of the medical practitioner shall be furnished to the board and the judge.

Rule 15. Involuntary Retirement

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the Supreme Court. If attempts to convince a judge to retire voluntarily fail, then the board shall proceed to file a formal complaint, hold a public hearing, make findings of fact, and present recommendations to the Supreme Court.

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the Court and may, upon order of the Court, be transferred to inactive status or indefinitely suspended from practicing law in the jurisdiction.

Rule 16. Amendment of Rules

As procedural and other experience may require or suggest, the board may petition the Supreme Court for further rules of implementation or for necessary amendments to these rules.

64-85-697

RULE RECOMMENDATION COMMENTS As approved by Committee 11/22/85

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WAYNE TSCHIMPERLE
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AD HOC COMMITTEE
ON THE
RULES ON THE BOARD OF JUDICIAL STANDARDS

RULE	RECOMMENDATION	COMMENTS
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Rule 1

(f) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be five members of the board.

(2) The board shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson. (Source: present rule A[5].)

(g) Meetings of the Board. Meetings of the board shall be held at the call of the chairperson; the vice-chairperson; the executive secretary; or the written request of three members of the board. (Source: present rule A[6].)

(h) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the chief justice of the supreme court and other copies may be made available to the public by a majority vote of the full board. (Source: present rule A[7].)

(i) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget. (Source: present rule A[4].)

(e) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be six members of the board.

(2) The board shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson.

RULE	RECOMMENDATION	COMMENTS
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Rule 2. Jurisdiction and Powers of Board

(a) Powers in General. The board shall have the power to receive information, investigate, conduct hearings, and make recommendations to the supreme court concerning:

- (1) Allegations of judicial misconduct;
- (2) Allegations of physical or mental disability of judges; and
- (3) Matters of voluntary retirement for disability. (Source: ABA Std. 1.5-1.7)
- (4) Review of a judge's compliance with Minn.St. 546.27.

(b) Persons Subject to Discipline. At any level of government, anyone exercising judicial powers and performing judicial functions, including judges assigned to administrative duties within the judicial branch, shall be subject to judicial discipline and disability retirement under these rules. (Source: ABA Std. 1.2)

(c) Jurisdiction Over Sitting Judges. The board shall have jurisdiction over the conduct of all persons subject to discipline under section (b), including all sitting full and part-time judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. In cases of sitting full-time judges, this jurisdiction shall be exclusive. In cases of sitting part-time judges, the board shall have exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board may also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of a part-time judge not occurring in a judicial capacity, including conduct occurring prior to the assumption of judicial office.

(b) Persons Subject to Discipline. Anyone exercising judicial powers and performing judicial functions within the judicial branch, including judges assigned to administrative duties, shall be subject to judicial discipline and disability retirement under these rules.

RULE	RECOMMENDATION	COMMENTS
<p>Rule 2</p> <p>(d) Jurisdiction Over Former Judge. The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the supreme court. (Source: ABA Std. 3.2)</p> <p>(e) Subpoena and Discovery.</p> <p>(1) At all stages of a proceeding under these rules, both the board and any judge being investigated shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.</p> <p>(2) The power to enforce process may be delegated by the supreme court. (Source: ABA Std. 4.18-4.19)</p>	<p>(e) Subpoena and Discovery.</p> <p>(1) During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(e), failure or refusal of a judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute conduct prejudicial to the administration of justice.</p> <p>(2) At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(e), both the board and the judge being investigated shall be entitled to compel, by subpoena, attendance and testimony of witnesses, including the judge as a witness, and the inspection of documents, books, accounts and other records.</p> <p>(3) The power to enforce process may be delegated by the Supreme Court.</p>	

AD HOC COMMITTEE
ON THE
RULES ON THE BOARD OF JUDICIAL STANDARDS

RULE	RECOMMENDATION	COMMENTS
<p>Rule 2</p> <p>(f) Rules of Procedure and Forms. The board shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings. (Source: ABA Std. 2.6)</p> <p>(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8. (Source: ABA Std. 1.8) (Amended March 26, 1981.)</p>		

RULE	RECOMMENDATION	COMMENTS
<p>Rule 3. Immunity Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties. (Source: ABA Std. 2.9)</p>	<p>Rule 3. Immunity</p> <p>Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 4. Grounds for Discipline</p> <p>(a) Grounds for discipline shall include:</p> <ol style="list-style-type: none"> (1) Conviction of a felony; (2) Willful misconduct in office; (3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute; (4) Conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute; (5) Any conduct that constitutes a violation of the code of judicial conduct or professional responsibility. (Source: ABA Std. 3.3) <p>(b) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Claims of error shall be left to the appellate process. (Source: ABA Std. 3.4)</p>	<p>Rule 4. Grounds for Discipline</p> <p>(a) Grounds for discipline shall include:</p> <ol style="list-style-type: none"> (1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude; (2) A persistent failure to perform judicial duties; (3) Incompetence in the performance of judicial duties; (4) Habitual intemperance; (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; (6) Conduct that constitutes a violation of the code of judicial conduct or professional responsibility. <p>(b) Disposition of Criminal Charges. A conviction, acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.</p> <p>(c) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Claims of error shall be left to the appellate process.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 5. Confidentiality</p> <p>(a) Before Probable Cause Found.</p> <p>(1) All proceedings shall be confidential until there has been a determination of probable cause and formal charges have been filed pursuant to Rule 8(c).</p> <p>(2) The board shall establish a procedure for enforcing the confidentiality provided by this rule.</p> <p>(3) A judge under investigation may waive his right to confidentiality prior to a filing of formal charges. (Source: ABA Std. 4.6-4.8)</p>	<p>Rule 5. Confidentiality</p> <p>(a) Before Formal Statement of ^{Complaint} Charges and Answer.</p> <p>(1) All proceedings shall be confidential until the Formal Statement of ^{COMPLAINT} Charges and Answer have been filed with the Supreme Court pursuant to Rule 9.</p> <p>(2) The board shall establish procedures for enforcing the confidentiality provided by this rule.</p> <p>(3) A judge under investigation may waive his right to confidentiality at any time during the proceedings.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 5</p> <p>(b) Public Statements by Board. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared. (Source: ABA Std. 4.9)</p>		

RULE	RECOMMENDATION	COMMENTS
<p>Rule 5</p> <p>(c) Disclosure for Judicial Selection, Appointment, or Assignment. If in connection with the selection or appointment of judges, any state or federal agency seeks information or written materials from the board concerning a judge, information may be divulged in accordance with procedures prescribed by the Supreme Court, including reasonable notice to the judge affected, unless the judge signs a waiver. If in connection with the assignment of a retired judge to judicial duties any appropriate authority seeks information or written materials from the board about that judge, information may be divulged in accordance with procedures prescribed by the supreme court, including reasonable notice to the judge affected, unless the judge signs a waiver. (Source: ABA Std. 4.10)</p>	<p>(c) Disclosure for Judicial Selection, Appointment, or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only (1) if the judge in question agrees to such dissemination and (2) if the file reflects some action of the board pursuant to Rule 6 (g) or Rule 8.</p> <p>(d) Oath. All members, employees, and agents of the board shall execute an oath which shall be filed with the board. Such oath shall include, but not necessarily be limited to, the following declarations of the person executing the oath:</p> <ol style="list-style-type: none"> (1) The person is aware of and understands the confidentiality requirement set forth in this rule; (2) The person understands that he or she must abide by the confidentiality requirement; (3) The person agrees to abide by the confidentiality requirement; (4) The person agrees to report immediately to the board any violations of the confidentiality requirement, whether committed by that person or another; (5) The person agrees and understands that any violations of the confidentiality requirement, or the person's oath, will result in removal as a board member or termination of employment with the board, and may lead to contempt proceedings pursuant to Rule 5(e). <p>(e) Contempt. Any member, employee or agent of the board who violates either the confidentiality requirement of this rule or the oath executed pursuant to this rule, may be held in contempt of the board by order of the Supreme Court. The board, by majority vote of its members, may refer any alleged contempt to the Supreme Court for its review. Such referral shall include the board's findings, conclusions, and recommendations with respect to the alleged contempt.</p> <p>After referral from the board, the Supreme Court shall hold such hearings as it deems necessary, including a hearing before a special referee appointed by the Supreme Court. Upon a finding of contempt by the Supreme Court, it may impose such penalties or sanctions as it deems appropriate.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6. Procedure Prior to Probable Cause Determination</p> <p>(a) Initiation of Procedure.</p> <p>(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including oral or written complaints made by judges, lawyers, court personnel, or members of the general public.</p> <p>(2) The board may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.</p> <p>(3) Upon request of the chief justice of the supreme court, the board shall make an investigation under this rule of the conduct or physical or mental condition of a judge. (Source: ABA Std. 4.1, present rule D[1].)</p>	<p>Rule 8. Procedure Prior to Sufficient Cause Determination</p> <p>(a) Initiation of Procedure.</p> <p>(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable information.</p> <p>(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.</p> <p>(3) Upon request of the chief justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(b) Absolute Privilege. A complaint submitted to the board or its staff or testimony related to the complaint shall be absolutely privileged, and no civil action predicated on the complaint may be instituted against any complainant or witness, or their counsel. (Source: ABA Std. 4.2)</p>	<p>(b) Absolute Privilege. Information or related testimony submitted to the board or its staff shall be absolutely privileged, and no civil action predicated on the information may be instituted against the informant or witness, or their counsel.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(c) Screening, Preliminary Investigation, and Evaluation.</p> <p>(1) Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet, and confidential investigation and evaluation.</p> <p>(2) Under guidelines prepared by the board, the executive secretary shall, based on his investigation and evaluation, determine whether there exists sufficient cause to proceed against the judge. The executive secretary shall have the authority to dismiss unfounded complaints, but the results of all investigations shall be routinely submitted to the board. (Source: ABA Std. 4.4, 4.14)</p>	<p>(c) Evaluation, Screening and Complaint.</p> <p>(1) Upon receipt of information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation.</p> <p>(2) The results of all evaluations shall be routinely submitted to the board. If the board determines that there exists sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a), it may authorize an investigation by filing the information as a complaint with the executive secretary.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(d) Discretionary Notice.</p> <p>(1) Notice that a complaint has been made may be given to the judge named in the complaint. (Source: ABA Std. 4.5)</p> <p>(2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the receipt of such complaint, and if not notified the complaint cannot be used against the judge.</p>	<p>(d) Discretionary Notice.</p> <p>(1) Notice that a complaint has been filed may be given to the judge named in the complaint.</p> <p>(2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the filing of such complaint and if not notified the complaint may not be used against the judge.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(e) Probable Cause Determination.</p> <p>(1) The board shall promptly consider the results of an investigation and evaluation conducted by the executive secretary. If the board determines that there is probable cause to proceed, it shall comply with Rule 8.</p> <p>(2) A finding of probable cause shall require the concurrence of a majority of the full board. (Source: ABA Std. 4.23)</p>	<p>(e) Sufficient Cause Determination.</p> <p>(1) The board shall promptly consider the results of an investigation conducted by the executive secretary. If the board determines that there is sufficient cause to proceed, it shall comply with Rule 8.</p> <p>(2) A finding of sufficient cause shall require the concurrence of a majority of the full board.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(f) Insufficient Cause to Proceed.</p> <p>(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be notified. If the judge has been informed of the proceeding, he shall also be notified of its termination, and the file shall be closed.</p> <p>(2) A closed file may be referred to by the board in subsequent proceedings.</p> <p>(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed shall be released by the board. (Source: ABA Std. 4.11-4.13)</p>	<p>(f) Insufficient Cause to Proceed.</p> <p>(1) Upon determination that there is insufficient cause to proceed, the informant, if any, shall be notified. If the judge has been informed of the proceeding, he shall also be notified of its termination, and the file shall be closed.</p> <p>(2) A closed file may not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 8(g) or Rule 8.</p> <p>(3) (stricken).</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 6</p> <p>(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find probable cause to proceed with a formal hearing, it may make any of the following dispositions:</p> <p>(1) The board may issue a private reprimand.</p> <p>(2) The board may by informal adjustment dispose of a complaint by:</p> <p>(i) Informing or admonishing the judge that his conduct is or may be cause for discipline;</p> <p>(ii) Directing professional counseling or assistance for the judge; or</p> <p>(iii) Imposing conditions on a judge's conduct.</p> <p>(Source: ABA Std. 6.6)</p>	<p>(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed with a formal hearing, it may make any of the following dispositions:</p> <p>(1) The board may issue a private reprimand.</p> <p>(2) The board may by informal adjustment dispose of a complaint by:</p> <p>(i) Informing or admonishing the judge that his conduct is or may be cause for discipline;</p> <p>(ii) Directing professional counseling or assistance for the judge; or</p> <p>(iii) Imposing conditions on a judge's conduct.</p> <p>(h) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(g) may demand a full hearing before a factfinder as provided in Rule 9.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 7. Interim Sanctions</p> <p>(a) Suspension for Felony. A judge shall be suspended with pay immediately by the supreme court without necessity of board action, upon the filing of an indictment or information charging him with a felony under state or federal law. Such suspension shall not preclude action by the board with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge. (Source: ABA Std. 6.1)</p> <p>(b) Suspension for Misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his ability to perform the duties of his office, may be grounds for immediate suspension with pay by the supreme court, without necessity of board action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not preclude action by the board with reference to the conduct upon which the charge was based. (Source: ABA Std. 6.2)</p> <p>(c) Misdemeanor Suspension Review. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the supreme court upon his application for review of the interim suspension order. (Source: ABA Std. 6.3)</p> <p>(d) Other Interim Suspension.</p> <p>(1) Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.</p> <p>(2) Upon a determination by the board of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the supreme court. (Source: ABA Std. 6.4, 7.12)</p> <p>(e) Disability Suspension. A judge who claims that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue. (Source: ABA Std. 6.5)</p>	<p>Rule 7. Interim Sanctions</p> <p>(a) Mandatory Suspension. The Supreme Court shall, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging him with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.</p> <p>(b) Permissive Suspension. The Supreme Court may, on its own motion or upon recommendation of the board, suspend a judge with pay.</p> <p>(1) Upon the filing of misdemeanor or gross misdemeanor charges against the judge if it adversely affects his ability to perform the duties of his office.</p> <p>(2) Upon the claim by the judge that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is a finding of no disability, the disciplinary proceeding shall continue.</p> <p>(3) Upon the recommendation to the Supreme Court by the Board of Judicial Standards for his removal or retirement.</p> <p>(4) Upon a finding by the board or the fact-finder that a judge has a physical or mental disability that seriously interferes with the performance of his duties.</p> <p>(5) In any other proceeding under these rules.</p> <p>(c) Review of Permissive Suspension. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the Supreme Court upon his application for review of the interim suspension order.</p> <p>(d) (stricken)</p> <p>(e) (stricken)</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 8. Procedure Where Probable Cause Found</p> <p>(a) Sworn Complaint or Statement.</p> <p>(1) After a finding of sufficient cause to proceed, the board shall ask the complainant to file a detailed sworn complaint against the judge. When a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.</p> <p>(2) The judge shall be served promptly with a copy of the sworn complaint or statement of allegations. Service shall be accomplished in accordance with the Rules of Civil Procedure.</p> <p>(3) The documents served under section (2) shall require the judge to respond to the complaint or statement in writing within 20 days. A personal appearance before the factfinder shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, his statement shall be recorded (Source: ABA Std. 4.16, 4.16, 4.20, present rule E[2] (3).)</p>	<p>Rule 8. Procedure Where Sufficient Cause Found</p> <p>(a) Formal Statement of Charges.</p> <p>(1) After a finding of sufficient cause to proceed, a Formal Statement of Charges against the judge and the alleged facts forming its basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.</p> <p>(2) The judge shall be served promptly with a copy of the Formal Statement of Charges. Service shall be accomplished in accordance with the Rules of Civil Procedure.</p> <p>(3) The documents served under section (2) shall require the judge to respond to the Formal Statement of Charges in writing within 20 days. A personal appearance before the board shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, his statement shall be recorded.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 8.</p> <p>(b) Termination after Response. The board may terminate the proceeding and dismiss the complaint following the response by the judge, or at any time thereafter, and shall in that event give notice to each complainant and to the judge that it has found insufficient cause to proceed. (Source: ABA Std. 4.21)</p>	<p>(b) Termination after Response. The board may terminate the proceeding and dismiss the Formal Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event give notice to each informant and to the judge that it has found insufficient cause to proceed.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 8.</p> <p>(c) Formal Statement of Charges.</p> <p>(1) If termination under section (b) is not appropriate, the board shall file a formal statement of charges with the executive secretary. Confidentiality ceases upon this filing.</p> <p>(2) The judge shall be served promptly with a copy of the formal statement of charges and shall respond as provided in section (a)(2) and (3) of this rule. (Source: ABA Std. 5.1-5.3)</p>	<p>Rule 9. Formal Statement of Complaint and Notice</p> <p>(a) Formal Statement of Complaint</p> <p>(1) The board shall prepare and sign a Formal Statement of Complaint.</p> <p>(2) The judge shall be served promptly with a copy of the Formal Statement of Complaint. Service shall be accomplished in accordance with the Rules of Civil Procedure in effect at the time of the service. The judge shall respond to the Formal Statement of Complaint in writing within 20 days. The executive secretary, upon receiving the written response of the judge, or if none has been received, within 25 days of service of the Formal Statement of Complaint, shall file the Formal Statement of Complaint and any written response thereto with the Supreme Court.</p> <p>(3) The files of the board, other than the Formal Statement of Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions, or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 8.</p> <p>(d) Notice of Hearing.</p> <p>(1) Upon the filing of formal charges, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 30 days following the receipt of the judge's response under section (c)(2) of this rule. The judge and all counsel shall be notified of the time and place of the hearing.</p> <p>(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.</p> <p>(3) The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader. (Source: ABA Std. 5.4-5.7)</p>	<p>Rule 9. Formal Statement of Complaint and Notice</p> <p>(b) Notice of Hearing.</p> <p>(1) Upon the filing of Formal Statement of Complaint and Response, if any, with the Supreme Court, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 90 days than the time limits set under section (a) (2) of this rule. The judge and all counsel shall be notified of the time and place of the hearing.</p> <p>(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.</p> <p>(3) The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 9. Formal Hearing</p> <p>(a) Factfinder.</p> <p>(1) The formal hearing shall be public and conducted before a factfinder, which may be the entire board, three-member hearing panels appointed by the chairperson, or a referee appointed by the supreme court.</p> <p>(2) If the board directs that the hearing be held before a referee to be appointed by the supreme court, the board shall file an ex parte written request to the supreme court to appoint a referee for such purpose, accompanied by a copy of the complaint. The supreme court shall, within 10 days from receipt of such request, appoint a referee to conduct such hearing.</p> <p>(3) The person designated to preside at a hearing shall be either a judge or a lawyer who is familiar with ruling on motions and admission of evidence. (Source: ABA Std. 5.9, 5.10, present rule G[2].)</p> <p>(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the Minnesota Rules of Evidence shall apply, and the judge shall be accorded due process of law.</p> <p>(c) Presentation; Burden of Proof; Cross-examination; Recording.</p> <p>(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the factfinder.</p> <p>(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.</p> <p>(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence.</p> <p>(4) Every formal hearing conducted under these rules shall be recorded verbatim. (Source: ABA Std. 5.12-5.14, 5.18)</p> <p>(d) Amending Allegations. By leave of the board or by consent of the judge, the statement of charges may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response. (Source: ABA Std. 5.16)</p>	<p>Rule 10. Formal Hearing</p> <p>(a) Factfinder.</p> <p>(1) The formal hearing shall be public and conducted before a factfinder, which may be a referee or three-member referee panel, appointed by the Supreme Court.</p> <p>(2) The Supreme Court shall appoint a factfinder to conduct such hearings within 10 days of the filing of the Formal Statement of Complaint.</p> <p>(3) Whenever possible, referees appointed by the Supreme Court to preside at a hearing shall be retired judges, in good standing, but in any event, referees shall be either judges or lawyers.</p> <p>(d) Amending Allegations. By leave of the factfinder or by consent of the judge, the Formal Statement of Charges ^{Complaint} may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 10. Procedure Following Formal Hearing</p> <p>(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation. (Source: ABA Std. 5.19)</p> <p>(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations. (Source: ABA Std. 5.20)</p> <p>(c) Review by the Board. The findings and conclusions and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder. (Source: ABA Std. 5.21, 5.22)</p> <p>(d) Disciplinary Sanctions. The board's decision shall include a recommendation to the supreme court of any of the following sanctions:</p> <ol style="list-style-type: none"> (1) Removal; (2) Retirement; (3) Imposing discipline as an attorney; (4) Imposing limitations or conditions on the performance of judicial duties; (5) Reprimand or censure; (6) Imposing a fine; (7) Assessment of costs and expenses; (8) Any combination of the above sanctions. <p>(Source: ABA Std. 6.7)</p> <p>(e) Recommended Discipline.</p> <ol style="list-style-type: none"> (1) A recommendation for discipline shall be reported to the court only if concurred in by a majority of all members of the board. (2) If a majority of the members of the board fail to concur in a recommendation for discipline, the matter shall be dismissed. (3) Any dissenting opinion shall be transmitted to the supreme court with the majority decision. (Source: ABA Std. 5.23-5.25) 	<p>Rule 11. Procedure Following Formal Hearing</p> <p>(d) Disciplinary Sanctions. The board's decision shall include a recommendation to the Supreme Court of any of the following sanctions:</p> <ol style="list-style-type: none"> (1) Removal; (2) Retirement; (3) Imposing discipline as an attorney; (4) Imposing limitations or conditions on the performance of judicial duties; (5) Reprimand or censure; (6) Imposing a civil penalty; (7) Any combination of the above sanctions. 	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 11. Costs</p> <p>(a) Witness Fees.</p> <p>(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.</p> <p>(2) Expenses of witnesses shall be borne by the party calling them, unless:</p> <p>(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or</p> <p>(ii) The judge is exonerated of the charges against him, in which case the supreme court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him and order that those fees be reimbursed. (Source: ABA Std. 5.26-5.27)</p> <p>(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost. (Source: ABA Std. 5.28)</p> <p>(c) Other Costs. All other costs of these proceedings shall be at public expense. (Source: ABA Std. 5.29)</p>	<p>Rule 12. Costs</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 12. Supreme Court Review</p> <p>(a) Filing and Service. The board shall, at the time it files its record, findings, and recommendations with the court, serve copies upon the respondent judge. Proof of service shall also be filed. (Source: ABA Std. 7.1)</p> <p>(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the court shall promptly docket the matter for expedited consideration. (Source: ABA Std. 7.3)</p> <p>(c) Briefs. The board and the judge shall file briefs with the court in accordance with the requirements of Rule 128 of the Rules of Appellate Procedure. (Source: ABA Std. 7.2)</p> <p>(d) Additional Findings and Filings; Supplemental Record.</p> <p>(1) If the court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the board with appropriate directions, retaining jurisdiction, and shall hold the matter pending receipt of the board's filing of the additional record.</p> <p>(2) The court may order additional filings or oral argument as to specified issues or the entire matter.</p> <p>(3) The court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard. (Source: ABA Std. 7.4-7.6)</p> <p>(e) Delay for Further Proceedings. The court, on receipt of notice of an additional proceeding before the board involving the same judge, may delay decision and hold the matter pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the court may impose a single sanction covering all recommendations. (Source: ABA Std. 7.7)</p> <p>(f) Decision. The court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, accepting, rejecting, or modifying in whole or in part, the recommendations of the board. (Source:</p>	<p>Rule 13. Supreme Court Review</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 12.</p> <p>(g) Consideration of Lawyer Discipline. The court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal of a judge is deemed appropriate by the court, it shall notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard on the issue of the lawyer discipline, if any, to be imposed. (Source: ABA Std. 7.13)</p> <p>(h) Charge Against Supreme Court Justice. Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that other members of the court shall disqualify themselves under Minn.St. 2.724, subd. 2, as they deem necessary. (Source: ABA Std. 7.14)</p> <p>(i) Motion for Rehearing. In its decision, the supreme court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct and the respondent wishes to file a motion for rehearing, he may present a motion for rehearing within 15 days after filing of the decision. (Source: present rule W)</p>	<p>Rule 13.</p> <p>(g) Consideration of Lawyer Discipline. When the Board on Judicial Standards recommends the removal of a judge, the Supreme Court shall notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard in the Supreme Court on the issue of lawyer discipline.</p> <p>(h) Charge Against Supreme Court Justice. When any charge has been filed against a member of the Supreme Court, the charge shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or his designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Justice.</p>	

RULE	RECOMMENDATION	COMMENTS
<p>Rule 13. Special Provisions for Cases Involving Mental or Physical Disability</p> <p>(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the board shall follow the same procedures that it employs with respect to discipline for misconduct. (Source: ABA Std. 8.2)</p> <p>(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the board shall appoint an attorney to represent him at public expense. (Source: ABA Std. 8.3)</p> <p>(c) Medical Privilege.</p> <p>(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his medical records.</p> <p>(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the board. The report of the medical practitioner shall be furnished to the board and the judge. (Source: ABA Std. 8.4-8.5)</p>	<p>Rule 14. Special Provisions for Cases Involving Mental or Physical Disability</p>	

